

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARVIN PACK, JR.,  
  
Petitioner,  
  
v.  
  
WARDEN,  
  
Respondent.

No. 2:24-cv-02998-DC-SCR (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(Doc. Nos. 13, 19)

Petitioner Marvin Pack, Jr., a state prisoner proceeding *pro se*, filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 1, 2025, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one (21) days. (Doc. No. 14.) Petitioner filed timely objections to the findings and recommendations and a motion for leave to file late objections. (Doc. No. 15.) The court reviewed Petitioner's objections and finds they do not provide a basis upon which to reject the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper

1 analysis.

2 Having found that Petitioner is not entitled to habeas relief, the court now turns to whether  
3 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no  
4 absolute entitlement to appeal a district court's denial of his petition, and an appeal is allowed  
5 only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. §  
6 2253. If a court denies a habeas petition on the merits, the court may issue a certificate of  
7 appealability only if “jurists of reason could disagree with the district court’s resolution of [the  
8 petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate  
9 to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327 (citing *Slack v.*  
10 *McDaniel*, 529 U.S. 473, 484 (2000)). The petitioner is not required to prove the merits of his  
11 case, but he must demonstrate “something more than the absence of frivolity or the existence of  
12 mere good faith on his or her part.” *Miller-El*, 537 U.S. at 328 (quoting *Barefoot v. Estelle*, 463  
13 U.S. 880, 893 (1983)) (internal quotation marks omitted). Additionally, when the court denies  
14 habeas relief on procedural grounds without reaching an underlying constitutional claim, a court  
15 should issue a certificate of appealability if “jurists of reason would find it debatable whether the  
16 petition states a valid claim of the denial of a constitutional right and that jurists of reason would  
17 find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at  
18 484.

19 In the present case, the court concludes that reasonable jurists would not find the court’s  
20 determination that the petition should be denied to be debatable or wrong, or that the issues  
21 presented are deserving of encouragement to proceed further. Thus, the court declines to issue a  
22 certificate of appealability.

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. The findings and recommendations filed on October 1, 2025 (Doc. No. 14) are  
25 ADOPTED IN FULL;
- 26 2. Petitioner’s motion for leave to file late objections (Doc. No. 15) is DENIED;
- 27 3. Respondent’s motion to dismiss (Doc. No. 9) is GRANTED;
- 28 4. Petitioner’s application for a writ of habeas corpus (Doc. No. 1) is dismissed with

prejudice;

5. The court declines to issue a certificate of appealability; and

6. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: **December 16, 2025**

A handwritten signature in black ink, appearing to read 'Dena Coggins', is written over a horizontal line.

Dena Coggins  
United States District Judge